

# EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In Re: ) **Case No. 19-34054-sgj-11**  
) Chapter 11  
)  
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P., ) January 24, 2024  
) 9:30 a.m. Docket  
Reorganized Debtor. )  
) - HIGHLAND'S MOTION FOR  
) BAD FAITH FINDING [3851]  
) - HIGHLAND'S MOTION TO STAY  
) CONTESTED MATTER [4013]  
)

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Reorganized Debtor: John A. Morris  
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Recorded by: Michael F. Edmond, Sr.  
UNITED STATES BANKRUPTCY COURT  
1100 Commerce Street, 12th Floor  
Dallas, TX 75242  
(214) 753-2062

1 'but for' test in *Lopez* and the cases that it cites.

2 So, our conclusion, Your Honor. First, the reply doesn't  
3 change anything. They don't give you any new authority or any  
4 basis to award sanctions or bad faith analysis, if for no  
5 other reason than the record is already closed. You've seen  
6 this all before. And when asked repeatedly for a bad faith  
7 finding, you didn't give it to them. No bad faith in the  
8 filing of the claim.

9 The requested fees are reasonable and necessary. Your  
10 Honor, so they flunk the *Johnson* factors. They fail the 'but  
11 for' test.

12 Respectfully, Your Honor, their motion should be denied.  
13 If it's not going to be denied, we would like an opportunity  
14 to file supplemental briefing addressing the new authorities  
15 in the reply brief. Your Honor, I don't think we need to go  
16 there. I think you should deny it outright.

17 Subject to questions from the Court, that concludes my  
18 presentation.

19 THE COURT: All right. A few follow-up questions.  
20 In arguing about the size of the potential fees if I get to  
21 bad faith, you've had a little bit of a theme of: It was just  
22 a proof of claim, it was not difficult, and this was not some  
23 "slapdash proof of claim." So you emphasize not reasonable  
24 fees for addressing the proof of claim, and you also stress  
25 can't find any authority where attorneys' fees have been

1 Morris argued. I remember very well the evidence was that  
2 Highland put in \$49,000 to get its membership interest in SE  
3 Multifamily Holdings, but I already heard that it was required  
4 ultimately to be a cosigner on a \$500 million loan from Key  
5 Bank. It provided resources, at least until some point during  
6 the bankruptcy, to SE Multifamily. And again, the tax benefit  
7 of absorbing the income from the entity, which, again, it's  
8 nothing to sneeze at here.

9 All of that I think was addressed pretty thoroughly in my  
10 earlier opinion, but again, I'm going to go back and look at  
11 it and the evidence and give you a thorough ruling one way or  
12 another on the indicia of bad faith as well as the  
13 reasonableness of fee-shifting.

14 All right. It sounds like I'm going to see you on  
15 February 14th, or some of you, and so I shall see you then.  
16 We're adjourned.

17 THE CLERK: All rise.

18 MR. GAMEROS: Your Honor?

19 THE COURT: I'm sorry?

20 MR. GAMEROS: Your Honor?

21 THE COURT: Yes.

22 MR. GAMEROS: Yeah, I'm sorry. I did ask, if you  
23 weren't going to deny it outright, if I could file a brief  
24 surreply. Is that allowed?

25 THE COURT: No. I've got enough on briefing on this.

1 Thank you.

2 MR. GAMEROS: All right. Thank you.

3 (Proceedings concluded at 11:41 a.m.)

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CERTIFICATE

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I certify that the foregoing is a correct transcript from  
the electronic sound recording of the proceedings in the  
above-entitled matter.

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**/s/ Kathy Rehling**

**01/24/2024**

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Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

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Date

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PROCEEDINGS

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WITNESSES

-none-

EXHIBITS

-none-

RULINGS

Highland's Motion to Stay Contested Matter (4013) -  
*Granted*

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Highland's Motion for (A) Bad Faith Finding and (B)  
Attorneys' Fees Against NexPoint Real Estate Partners,  
LLC (3851) - *Taken Under Advisement*

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